

Rail Topic Group Meeting Summary Notes Tuesday, January 20, 1998 8:00-11:30 a.m. Alexis Park Hotel, Las Vegas

Topic Group Meeting Participants were:

Audrey Adamson, UETC	Daren Gilbert, State of Nevada
James Baranski, State of New York	Phil Marbut, Canadian Pacific Railway
Kevin Blackwell, US DOT/FRA	Bruce Marriott, US DOT/FRA
Mike Butler, UETC	Kevin Miller, CSX Transportation
Sandy Covi, Union Pacific RR	Markus Popa, US DOE-OCRWM
Ray English, US DOE-NR	David Schoendorfer, Norfolk Southern RR
Bob Fronczak, AAR	John Tijan, US DOT/FRA

The group convened at approximately 8:00 a.m. Mr. Butler distributed a meeting agenda, welcomed participants and introduced himself as the new Rail Topic Group lead and facilitator. He introduced Item I, "Existing Business"; specifically the two matrices tasked to the Group by the TEC/WG Membership at the July meeting. Mr. Butler noted that he would like the bulk of this meeting to focus on review and discussion of these two matrices, a method for introducing them to the wider TEC/WG, and an approach and deadline for member comments on the documents. He then opened the meeting to discussion of Matrix 1, "Rail and Highway Regulations Relative to the Transportation of Radioactive Materials and Their Applicability to States, Tribes, Shippers, and Carriers."

Mr. English began the discussion by requesting clarification as to the objective of Matrix 1. Mr. Blackwell responded that it had grown out of a prior request by the TEC/WG for more information on rail regulations for those members with relatively little knowledge of the subject. Mr. Butler then asked participants to supply comments on the content and format of the matrix. Mr. Blackwell informed Mr. Butler that 49 CFR 174 in its entirety applies to rail transport, not just subsection K as listed on page 1, and suggested the matrix be updated to reflect this. Several members of the Group expressed concern with the inclusion of the Tribal Applicability column; members felt the Group may not have the expertise to provide definitive answers as to which regulations are expressly applicable to tribes. Mr. English concurred with other Group members on the importance of the issue of regulatory applicability as pertains to tribes, but noted that it is equally important to recognize that tribes and other entities ultimately do not have the legal right to supersede national security concerns and stop rail shipments. Mr. Blackwell countered that even the FRA does not have the right to stop trains, per se, given that they are private property; he asserted that the issue in question was the tribes' right to conduct inspections. Mr. English stated that tribes are in a difficult position, because they have no independent authority to inspect, and must be affiliated with a state agency in order to participate in the FRA state inspection program. He asked Mr. Blackwell if the FRA had considered working on changing the

regulations in that regard; Mr. Blackwell responded that to date there have been no real overtures to the FRA on the part of any tribe to have the regulations changed.

Mr. Baranski asked the Group what the tribal role is in emergency response to rail accidents on tribal lands. Ms. Covi replied that in such an incident in Idaho, Union Pacific was forced to request state assistance because the tribe in that situation had no emergency response infrastructure. Mr. English raised the point that since railroad carriers establish emergency response procedures with local jurisdictions, could they also do the same with tribes? Ms. Covi replied that Union Pacific has opened a dialogue with a host of tribes and offered awareness-level training, but noted that many tribes do not have the personnel nor resources to commit specifically to hazardous materials training for emergency responders. Mr. Fronczak noted that almost exclusively, tribes rely on states and/or carriers for that specific type of incident response.

At that juncture, Mr. English mentioned to the Group that other principals involved in the TEC/WG process had mentioned forming a Tribal Issues Topic Group to consider tribal-specific issues, and asked whether the Rail Topic Group would support such a group being formed. A show of hands was taken, and the members endorsed a Tribal Topic Group. Mr. English suggested that once constituted, the Tribal Topic Group might consider some of the issues raised in this discussion and in Matrix 1 related to regulatory applicability. Mr. Butler said that he would present this idea to the TEC/WG Activity Manager.

In returning to discussion of Matrix 1, Msrs. Tijan and Marriott pointed out that 49 CFR 217 has greater applicability to the "Transportation Operations" subject area and should be moved from the "Training" area. Mr. Tijan also suggested that 49 CFR 107 be added to the "Training" subject area, as it concerns licensing requirements that involve annual fees for state-level training. Mr. Butler made note of both changes and solicited further comments. Mr. Fronczak suggested gridlines be added for viewing ease. Mr. Butler then asked the Group to consider how it would like to present Matrix 1 to the wider TEC/WG. Mr. Blackwell pointed out that since the Topic Groups were considered subject area experts, the Group should only request comments on layout and ease of viewing from the TEC/WG at-large. The Group agreed, and also recommended that the objective of the matrix be included in the presentation, as well as the mention that this document is considered by the Topic Group to be a "living document", to change as regulations change in form and scope.

Discussion then turned to the next item of existing business, Matrix #2, "Comparison of Commercial Vehicle Safety Alliance Recommended National Procedures and Out-of-Service Criteria for the Enhanced Safety Inspection of Commercial Highway Vehicles Transporting Transuranics, Spent Nuclear Fuel, and High Level Waste to Rail Inspection Standards." Mr. Butler began the discussion by pointing out that, unlike Matrix #1, this matrix was intended as a comparative document. Mr. Tijan asked the authors of the matrix to explain the difference between regulations and rules/standards/practices. Mr. Blackwell replied that it might be wise to attach an explanatory cover sheet to address questions such as that one that may arise for users; he answered that regulations are promulgated by the FRA while rules, standards, and practices are set by the rail industry. Mr. Baranski questioned the basis for comparison of the two types of standards, given that the enhanced CVSA criteria is an "out-of-service" document while rail standards are just guidelines. Mr. English countered that the CVSA standards do not have

explicit regulatory enforcement provisions, while AAR rules, standards, and recommended practices in effect are capable of putting a rail car out-of-service. Mr. Marriott agreed with Mr. English, in that if an operator is not in compliance with AAR criteria, the car is taken out of service and cannot be moved without substantial penalty. Mr. Blackwell reminded the group that the matrix is not intended to compare the enforcement mechanisms supporting each inspection regime, but rather to display that federal regulations and AAR rules, standards, and practices cover at the very minimum the same things that the enhanced CVSA document covers.

Mr. English pointed out that the vast majority of states have adopted the CVSA standards but not the corresponding rail standards, and asked Group members to clarify why this is so. Mr. Blackwell replied that federal laws give states jurisdiction over highways, while rails remain essentially in the private domain. In the case of rail inspection, he noted, states only have enforcement power over FRA regulations. Mr. English asked the Group to consider the specificity of FRA regulations as compared to AAR industry standards—if states can't easily adopt industry standards, are there FRA regulations that are equally as stringent that they can adopt? Mr. Blackwell pointed out that technically states can adopt any industry standards they choose from the AAR field manual that exceed federal regulations. He pointed out that conceptually, federal regulations are intended as a minimum standard only, and states are free to exceed the regulatory standards. Mr. English noted that Mr. Blackwell's point about state adoption of AAR standards resembles the process by which the states originally identified the need for and adopted the CVSA criteria—they simply were looking for a greater degree of specificity than that already provided by federal highway regulations.

Mr. Baranski asked if the AAR standards dictate what conditions require taking a rail car out-of-service. Mr. Marriott replied that they do, to the point of describing how the problem should be serviced, by what type of mechanic, and how much it should cost. Mr. Blackwell noted that in some FRA regulations, the AAR standards are used as the point of reference, for instance in 49 CFR 179 which pertains to repairs. Mr. Gilbert asked if a train was inspected using AAR standards and had a problem in transit, could AAR be cited? Mr. Fronczak replied that AAR standards are not federally enforceable. Mr. Blackwell pointed out to Mr. Gilbert that his question was moot for the purposes of this discussion, as the AAR standards and practices included in the matrix pertain to point-of-origin inspection only. Mr. Baranski commented that CVSA criteria provides for en-route inspections, where vehicles can be declared out of service on the spot. Mr. Blackwell informed him that trains are also inspected at stopping points along the route and can be taken out of service, with the only difference being the added difficulty of actually removing car(s) from the track, which is done if and when necessary.

Mr. English remarked that the combined application of the FRA regulations and the AAR manual in fact cover every conceivable inspection-related subject, and wondered what additional questions or concerns TEC/WG members could have. Mr. Blackwell said that the Group was tasked with this matrix in part because of concerns that the rail industry does not have anything corresponding to what is perceived as a CVSA "seal of approval" for highway vehicles, but that he felt this document will address that concern. Ms. Covi remarked that the rail industry has established these practices well in advance of the corresponding CVSA regime, the standards are more detailed and have proven effective, and the only difference she could identify was the lack of strict state enforceability in every case. In her opinion, CVSA has simply brought highway

transportation up to the high standards previously established by the rail industry. Mr. Blackwell concurred, but added that the enforceability issue is the sticking point for some TEC/WG members.

Mr. Baranski said that in his opinion, it was important that categories in the matrix such as radiological exposure should be distinctly framed as comparisons, not to be construed as parallels. Mr. Blackwell responded that exposure levels are actually common across 49 CFR, which raised an important and related point discovered by the authors of the matrix, that in many cases the "enhanced" CVSA criteria are not actually enhanced beyond the point of that required by federal regulation. He mentioned placarding as another example. Mr. Gilbert returned to the enforceability question, asserting that FRA inspectors cannot enforce any of these standards beyond Column #2, the federal rail regulations. Mr. Marriott rebutted that AAR standards are enforced by inspectors, as the inspectors can and do cite carriers for not following the rules they themselves have adopted. Mr. Blackwell added that rail carriers have to maintain up to the standards enumerated in both columns 3 and 4, through agreements. Mr. Fronczak pointed out to the group that adding more burdensome enforceability components for a private industry to comply with would probably have the end result of limiting the level of self-regulation that the rail industry does, which Mr. Blackwell added would have the effect of turning what are intended as minimum standards (federal regulations) into maximum standards. Mr. Fronczak added that fines and punitive measures are not the only way to enforce inspection standards; agreements through the FRA and contract stipulations in DOE contracts can bring about the desired end.

At that time, Mr. Butler pointed out that the remaining time was limited and that Item II on the agenda, "New Business", would have to be postponed to a later date. He suggested the remaining time be used to consider introduction of Matrix 2 to the TEC/WG members. Mr. Baranski stressed the importance of pointing out the comprehensiveness of the FRA and AAR measures as pertain to safe equipment, as well as the need to remind the TEC/WG that while it may be difficult for states to legislatively adopt AAR industry practices, they do have a mechanism for involvement, namely the FRA inspection program which enforces those very same industry practices. Mr. Blackwell added that it is also important for the Group to state to the membership that, as the subject area "experts" tasked with comparing the two inspection regimes, it is the Group's opinion that constructing an "equivalent" to the CVSA document would be duplicative and unnecessary. The Group concurred with these statements.

Mr. Butler then asked for a representative to present the matrices in the Topic Group Reports plenary session. Mr. Blackwell agreed to represent the Group with the assistance of Mr. Butler. Mr. Butler then asked participants if there were any other outstanding issues related to the form or presentation of the matrices. Ms. Covi requested that once finalized, Mr. Butler mail each member of the Group a disk with copies of each matrix. Mr. Butler agreed, and also noted that the matrices would likely be added to the TEC/WG homepage when completed. He then thanked participants for their participation, and adjourned the meeting at approximately 11:55 a.m.